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June 14, 2017

**By ECF**

U.S. District Court Judge John G. Koeltl  
U.S. District Court for the SDNY  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St. New York, NY 10007-1312

**Re: Hirsch v. SMG Media, Inc., No. 16-cv-7308 (JGK)(AJP) – Letter Regarding Request To Withdraw ECF Docket No. 71 And To Reopen Case**

Dear Judge Koeltl:

We are counsel for Defendant SMG Media, Inc. I write to notify the Court that ECF Docket Entry No. 71, which states that the parties reached a settlement and that no costs should be awarded in this action, is inaccurate. The parties did not reach a settlement. Instead, Magistrate Judge Peck, at today's Rule 37.2 conference, informed counsel for Plaintiff Steven Hirsch that he intended to issue an adverse inference against Hirsch for discovery violations to the effect that Hirsch could not establish any actual damages. Magistrate Judge Peck also informed counsel for Hirsch that he would order Hirsch and his counsel to pay, jointly and severally, \$10,000 in sanctions under F.R.C.P. 37 for their discovery violations unless Hirsch elected to voluntarily dismiss the case with prejudice. Hirsch's counsel elected to dismiss the case with prejudice. As such, Defendant is the prevailing party under the Copyright Act. Defendant fully intends to move for an award of attorneys' fees and costs against Hirsch under 17 U.S.C. § 505 as the prevailing party. Indeed, Defendant is filing today such a motion seeking an award of attorneys' fees and costs against former Plaintiff Fran Janik, who voluntarily dismissed his case with prejudice on May 24, 2017. Defendant respectfully requests that the Court withdraw and amend ECF Docket No. 71 to reflect that no settlement took place and that Defendant may file its motions under 17 U.S.C. § 505.

Respectfully submitted,  
/s/J. Matthew Williams  
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